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Stiteler Builders, Inc. and Bricklayers and Allied Craftworkers District Council of WV. Case 6-CA-29905

June 17, 1999

DECISION AND ORDER

BY MEMBERS FOX, LIEBMAN, AND HURTGEN

Upon a charge filed by the Union on July 7, 1998, the General Counsel of the National Labor Relations Board issued a complaint on April 19, 1999, against Stiteler Builders, Inc., the Respondent, alleging that it has violated Section 8(a)(1) and (3) of the National Labor Relations Act. Although properly served copies of the charge and complaint, the Respondent failed to file an answer.

On May 20, 1999, the General Counsel filed a Motion for Summary Judgment with the Board. On May 24, 1999, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

Sections 102.20 and 102.21 of the Board's Rules and Regulations provide that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the complaint affirmatively notes that unless an answer is filed within 14 days of service, all the allegations in the complaint will be considered admitted. Further, the undisputed allegations in the Motion for Summary Judgment disclose that the Region, by letter dated May 5, 1999, notified the Respondent that unless an answer was received by the third business day following receipt of that letter, a Motion for Summary Judgment would be filed.

In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent, a Pennsylvania corporation with its principal office and place of business in Greensburg, Pennsylvania, and an office and place of business near Bridgeport, West Virginia, at the Maplewood Retirement jobsite, has been engaged in business as a contractor in the construction industry doing commercial construction. During the 12-month pe-

riod ending June 30, 1998, the Respondent, in conducting its business operations, purchased and received at its Greensburg, Pennsylvania facility goods valued in excess of \$50,000 from points outside the Commonwealth of Pennsylvania. During the 12-month period ending June 30, 1998, the Respondent in conducting its business operations, sold and shipped from its Greensburg, Pennsylvania facility goods valued in excess of \$50,000 to points outside the Commonwealth of Pennsylvania. During the 12-month period ending June 30, 1998, the Respondent in conducting its business operations, performed services valued in excess of \$50,000 in States other than the Commonwealth of Pennsylvania. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

The Respondent, at its Maplewood Retirement jobsite, about June 22 and 26, 1998, by its job foreman Joseph Pits, about June 23, 1998, by its president James Stiteler, and about July 10, 1998, by its job foreman James Pits, interrogated its employees about their union membership, activities, and sympathies. About June 22 and July 1, 1998, the Respondent, at its Maplewood Retirement jobsite, by its job foreman Joseph Pits, interfered with its employees' Section 7 rights by informing its employees that the Respondent would not hire employees who supported the Union.

Since July 2, 1998, the Respondent has failed and refused to hire and to consider for hire the following individuals: Richard Ashmore, David Ely, Michael Handley, Gary Melloy, and Joseph Melloy.

The Respondent engaged in the conduct described above because the applicants for employment formed, joined, and assisted the Union and its constituent members and engaged in concerted activities, and to discourage employees from engaging in these activities.

CONCLUSIONS OF LAW

By the acts and conduct described above, the Respondent has been interfering with, restraining, and coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act, in violation of Section 8(a)(1) of the Act. By refusing to hire and consider for hire the individuals named above, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and (3) of the Act. The foregoing unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the

Respondent has violated Section 8(a)(3) and (1) by failing and refusing to hire and to consider for hire Richard Ashmore, David Ely, Michael Handley, Gary Melloy, and Joseph Melloy, we shall order the Respondent to offer them immediate employment that they would have had, but for the unlawful discrimination against them, and to make them whole for any loss of earnings and other benefits suffered as a result of the discrimination against them. Backpay shall be computed in accordance with *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987). The Respondent shall also be required to expunge from its files any and all references to the unlawful failure and refusal to hire and to consider for hire these individuals, and to notify them in writing that this has been done.

ORDER

The National Labor Relations Board orders that the Respondent, Stiteler Builders, Inc., Greensburg, Pennsylvania, and Bridgeport, West Virginia, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Interrogating its employees about their union membership, activities and sympathies, and interfering with its employees' Section 7 rights by informing its employees that it would not hire employees who supported the Union.

(b) Failing and refusing to hire or to consider for hire individuals because they formed, joined, or assisted the Union and its constituent members or engaged in concerted activities, or to discourage employees from engaging in these activities.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Within 14 days from the date of this Order, offer Richard Ashmore, David Ely, Michael Handley, Gary Melloy, and Joseph Melloy immediate employment in the same positions they would have had, but for its unlawful discrimination against them, or, if those jobs no longer exist, to substantially equivalent positions.

(b) Make Richard Ashmore, David Ely, Michael Handley, Gary Melloy, and Joseph Melloy whole for any loss of earnings and other benefits suffered as a result of the discrimination against them, with interest, in the manner set forth in the remedy portion of this decision.

(c) Within 14 days from the date of this Order, remove from its files any and all references to the unlawful failure and refusal to hire and to consider for hire these individuals, and within 3 days thereafter notify them in writing that this has been done, and that the unlawful conduct will not be used against them in any way.

(d) Preserve and, within 14 days of a request, make available to the Board or its agents for examination and

copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(e) Within 14 days after service by the Region, post at its facility in Greensburg, Pennsylvania, and its jobsite near Bridgeport, West Virginia, copies of the attached notice marked "Appendix."¹ Copies of the notice, on forms provided by the Regional Director for Region 6, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since June 22, 1998.

(f) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. June 17, 1999

Sarah M. Fox,	Member
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Wilma B. Liebman,	Member
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Peter J. Hurtgen,	Member
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(SEAL) NATIONAL LABOR RELATIONS BOARD

¹ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES

POSTED BY ORDER OF THE

NATIONAL LABOR RELATIONS BOARD

An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

To organize

To form, join, or assist any union

To bargain collectively through representatives of their own choice

To act together for other mutual aid or protection

To choose not to engage in any of these protected concerted activities.

WE WILL NOT interrogate our employees about their union membership, activities and sympathies, or interfere with our employees' Section 7 rights by informing our employees that we will not hire employees who support the Union.

WE WILL NOT fail and refuse to hire or to consider for hire individuals because they formed, joined, or assisted

the Union and its constituent members or engaged in concerted activities, or to discourage employees from engaging in these activities.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, within 14 days from the date of the Board's Order, offer Richard Ashmore, David Ely, Michael Handley, Gary Melloy, and Joseph Melloy immediate employment in the same positions they would have had, but for our unlawful discrimination against them, or, if those jobs no longer exist, to substantially equivalent positions.

WE WILL make Richard Ashmore, David Ely, Michael Handley, Gary Melloy, and Joseph Melloy whole for any loss of earnings and other benefits suffered as a result of the discrimination against them, less any net interim earnings, plus interest.

WE WILL within 14 days from the date of the Board's Order, remove from our files any and all references to our unlawful failure and refusal to hire or to consider for hire, and within 3 days thereafter notify the foregoing individuals that this has been done.

STITELER BUILDERS, INC.